

## **Tentative Rulings**

### **Law & Motion and Family Law Calendar for September 27**

September 23, 2010, 4:00p.m.

Judge Janet Hilde  
Department Two

**To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, Sept. 24, notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.**

#### **Probate – 9:00 a.m.**

##### **Case No. PR02-6251 – Conservatorship of Seever**

Tentative Ruling: [Judicial disclosure: Judge Hilde is well acquainted and socializes with Attorney Peter Hentschel.] **Granted.** The court finds that notice was given as required by law. Petitioners' Fifth and Final Account and Report of Conservators and Petition for its Settlement, and for Allowance of Conservator's and Attorney's Compensation is approved.

##### **Case No. PR09-00013 – Estate of Gakle**

Tentative Ruling: **Granted.** Petitioners' second request for an Order to Compel Filing of an Inventory and Appraisal is granted. The personal representative, Kathleen Copeland, is ordered to file an inventory and appraisal on or before October 8, 2010. It is further ordered that the personal representative pay the petitioners the sum of \$3,000 for attorney's fees for her failure to timely file an inventory and appraisal. Petitioners are to prepare the Order. Should the personal representative fail to file an inventory and appraisal by October 8, the court will issue an order to show cause why the personal representative should not be removed.

##### **Case No. PR10-00019 – Estate of Jenkins**

Tentative Ruling: **Appearance required.**

##### **Case No. PR10-00035 – Matter of Kylberg**

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Order Transferring Assets to Virginia Kylberg and Enlarging Her Community Spouse Resource Allowance and Minimum Monthly Maintenance Needs Allowance for Medi-Cal Eligibility Purposes is approved.

## **Civil – 9:30a.m.**

### **Case No. CV10-00160 – Calif State Auto Assn. vs. Costco Wholesale**

Tentative Ruling: **Demurrer sustained, with leave to amend.** The demurrer of Defendant Costco Wholesale Corporation (“Costco”) to the Complaint of Plaintiff California State Automobile Association Inter-Insurance Bureau (“Plaintiff”) is sustained. Plaintiff has 10 days to amend the fourth cause of action in the Complaint.

A demurrer admits the truth of all material facts alleged in the pleading, but not the contentions, deductions or conclusions of law or fact. (*Adelman v. Associated Int’l Ins. Co.* (2001) 90 Cal.App.4th 352, 359; *Cross v. Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266.) When the allegations of a pleading establish that there is no legal theory upon which liability may be imposed, the Court should sustain the demurrer. (*Carroll v. Puritan Leasing Co* (1978) 77 Cal.App.3d 481, 485.) If the circumstances show that the pleading deficiencies cannot be cured, the demurrer should be sustained without leave to amend. (*Droz v. Pacific Nat’l Ins. Co.* (1982) 138 Cal.App.3d 181.)

Plaintiff does not oppose Costco’s demurrer to the second and third causes of action. Thus, the demurrer to those causes of action is sustained without leave to amend. Costco’s demurrer to the fourth cause of action is granted with leave to amend. Plaintiff has failed to allege facts sufficient to state a cause of action for subrogation.

### **Case No. CV06-27011 – Eaton vs. Russakov**

Tentative Ruling: **No appearance required.** This matter is continued to October 13, 2010, at 9:30a.m., at the request of counsel.

### **Case No. CV 09-00194 – Martin vs. Lake Almanor Lakeside Villas**

Tentative Ruling: **Granted.** The motion for leave to file an amended complaint filed by Plaintiffs David Martin, Felisa Martin, Troy Glenn, Yvonne Glenn, Colleen Hebert, Jeffrey Hill, Susan Hill, Kevin McMullins, and Diane McMullins (collectively “Plaintiffs”) is hereby granted.

Pursuant to California Code of Civil Procedure section 473, the Court may, in the furtherance of justice and on any terms as may be proper, allow a party to amend any pleading. Plaintiffs’ move the court to file an amended complaint. The court has reviewed all papers in support and in opposition to the instant motion. The court does not find the proposed amended complaint to constitute a sham pleading as asserted by Defendant Homeowners’ Association. The court further does not find substantial prejudice to the parties in light of the fact that the Plaintiffs’ depositions have not been completed and no trial date has been set.

Plaintiffs have 10 days to file an amended complaint. Defendants shall have 30 days to file responsive pleadings thereto.

### **Case No. LC10-00170 – National Business Factors vs. Smith**

Tentative Ruling: **Denied.** Defendants’ claim of exemption is denied, as this case involves medical bills, which are defined as “common necessities of life” pursuant to CCP Section 706.05(c), and therefore, the claim of exemption cannot be granted.

**Case No. CV10-00105 – Prorise vs. First Franklin Loan Services**

Tentative Ruling: **Demurrer sustained, without leave to amend.**

Plaintiffs filed their 36-page complaint on April 14, 2010, against defendants Home Loan Services, Inc. doing business as First Franklin Loan Services (“First Franklin”), First Franklin Financial Corporation (“FFFC”), and US Bank National Association, as successor trustee to Bank of America, N.A., as successor or by merger to LaSalle Bank, N.A., as trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-2 (“BANA”), as well as Millenia Mortgage Corporation (“Millenia”), and plaintiffs’ loan officers Nick J. Daily and Nick Xavier Ibanez. Plaintiffs are requesting injunctive relief and damages as a result of a foreclosure following their default on an alleged predatory and toxic residential mortgage loan. Plaintiffs only allege the first, second, fourth, seventh, and eight causes of action against moving defendants FFFC, First Franklin, and BANA.

Defendants FFFC, First Franklin and BANA filed their demurrer on June 9, 2010, and scheduled the hearing date for September 27, 2010, even though Rule 3.1320(d) of the California Rules of Court require the demurrer must be noticed for hearing not more than 35 days after filing. Plaintiffs, however, have not filed any opposition.

A demurrer admits the truth of all material facts alleged in the pleading, but not the contentions, deductions or conclusions of law or fact. (*Adelman v. Associated Int’l Ins. Co.* (2001) 90 Cal.App.4th 352, 359; *Cross v. Bonded Adjustment Bureau* (1996), 48 Cal.App.4th 266.) When the allegations of a pleading establish that there is no legal theory upon which liability may be imposed, the Court should sustain the demurrer. (*Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 485.) If the circumstances show that the pleading deficiencies cannot be cured, the demurrer should be sustained without leave to amend. (*Droz v. Pacific Nat’l Ins. Co.* (1982) 138 Cal.App.3d 181.)

Each of these plaintiffs’ causes of action are dismissed for the following reasons: 1. The first cause of action for fraud fails because plaintiffs fail to allege any actionable misrepresentation of fact of any of the other necessary elements of fraud, and this cause of action is barred by the statute of limitations. 2. The second cause of action for breach of contract fails because it does not allege what the contract is and how it was supposedly breached, nor does it allege facts to support rescission on the grounds of mutual mistake. 3. The fourth cause of action for alleged violation of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) fails as a matter of law because the law does not apply to actions taken pursuant to foreclosure. 4. The seventh cause of action for violation of California’s Unfair Competition Law (“UCL”) fails because plaintiffs fail to allege a predicate wrong. 5. The eighth cause of action for violation of Civil Code section 2923.5, et seq. fails because plaintiffs have no standing to bring such a claim. Thus, the demurrer is sustained without leave to amend. Defendants’ motion to strike is moot. Judgment is entered in favor of defendants.

**Case No. CV09-00258 – Washoe Fuel vs. Pew**

Tentative Ruling: **Appearance required.**

**Case No. CV07-27377 – Yandell vs. Griffith**

Tentative Ruling: **No appearance required.** As stipulated by counsel, both parties' motions to compel discovery are withdrawn.

## **Family Law – 10:30 a.m.**

### **Case No. FL03-23925 – Mar. of Crites**

Tentative Ruling: **Appearance required.** The court will review the spousal support payments.

### **Case No. FL09-00203 – Dewey vs Jay**

Tentative Ruling: **Appearance required.** The court will order the parties to orientation and mediation.

### **Case No. FL10-00200 – Failing vs. McKinney**

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the respondent.

### **Case No. FL10-00192 – Ghidossi vs. Soto**

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the respondent.

### **Case No. FL05-25985 – Mar. of Heady**

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

### **Case No. FL06-26890 – Madarang vs. Gilman**

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the respondent.

### **Case No. FL09-00219 – Nield vs. Williams-Mobley**

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the respondent.

### **Case No. FL08-28100 – Mar. of Nord**

Tentative Ruling: **Appearance required.**

### **Case No. FL10-00150 – Satterlee vs. Lisenbery**

Tentative Ruling: **Appearance required.** If the court receives a mediated agreement prior to the hearing, this matter may be taken off calendar.

### **Case No. FL09-00295 – Stelzriede vs. Hughes**

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders.

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

## **CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS**

### **Case No. CV10-00023 – Alexander vs. PDH**

Tentative Ruling: **Appearance required.**

### **Case No. LC-00078 – Capital One vs. Harris**

Tentative Ruling: **No appearance required. This matter is continued to October 13, 2010, at 1:30p.m.** The court notes this is a collections case. Plaintiff has not filed a proof of service nor obtained an order for publication, pursuant to Rule 3.740(d). If proof of service on all defendants is not filed or the plaintiff has not obtained an order for publication of the summons within 180 days after the filing of the complaint, the court may issue an order to show cause why reasonable monetary sanctions should not be imposed.

### **Case no. CV10-00086 – Citibank vs. Garibotti**

Tentative Ruling: **No appearance required.** The case management conference is continued to November 22, 2010, at 1:30p.m. If a default judgment is entered prior to that date, this matter may be taken off calendar.

### **Case No. LC10-00089 – Citibank vs. Johnson**

Tentative Ruling: **No appearance required. This matter is continued to October 13, 2010, at 1:30p.m.** The court notes this is a collections case. Plaintiff has not filed a proof of service nor obtained an order for publication, pursuant to Rule 3.740(d). If proof of service on all defendants is not filed or the plaintiff has not obtained an order for publication of the summons within 180 days after the filing of the complaint, the court may issue an order to show cause why reasonable monetary sanctions should not be imposed.

### **Case No. CV10-00052 Distance Learning Systems Indiana vs. Eaton**

Tentative Ruling: **Appearance required.** OSC on plaintiff's failure to appear on September 13, 2010, for the case management conference.

### **Case No. LC09-00049 – FIA Card Services vs. Molina**

Tentative Ruling: **Appearance required.** OSC on plaintiff's failure to appear on September 13, 2010, for the case management conference.

### **Case No. FL06-26938 – Mar. of Goni**

Tentative Ruling: **Appearance required.** This matter will be set for trial. If settlement documents are filed prior to the hearing, this matter may be taken off calendar.

### **Case No. CV09-00065 – Adams vs. Dept. of Fish & Game**

Tentative Ruling: **Appearance required.** The court will discuss the proposed discovery plan.

**Case No. SC09-P0100 – Feather River Rail Society vs. Morgan**

Tentative Ruling: **Appearance required.**

**Case No. CV10-00014- Morgan vs. Feather River Rail Society**

Tentative Ruling: **Appearance required.**

**Case No. CV10-00019 – Gelini vs. Kehoe Pharmacy**

Tentative Ruling: **Appearance required.** The court will confirm the name of the mediator, and the date and time for mediation.

**Case No. CV09-00103 – Griffin vs. KG Walters Construction**

Tentative Ruling: **Appearance required.** The court will confirm the name of the mediator, and the date and time for mediation.

**Case No. 09-00194 – Martin vs. Lake Almanor Lakeside Villas**

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

**Case No. FL08-28100 – Mar. of Nord**

Tentative Ruling: **Appearance required.**

**Case No. FL00-21357 – Mar. of Stringfellow**

Tentative Ruling: **No appearance required.** The court ordered income and expense declarations submitted by September 13, 2010, for determination regarding payment for transportation costs for visitation. Petitioner has filed a timely declaration. Respondent has not filed any declaration. The court will order respondent to pay the total transportation costs for visitation.